

Life Imprisonment without Parole in China: A Policy Perspective

ZHOU, Zhenjie

Abstract

Life imprisonment without parole is not only an alternative to death sentence with immediate execution, but also a policy choice intended to cope with problems in enforcing sentences in corruption and bribery cases and a bridge to enhance public trust in criminal justice in China. Therefore, the question whether life imprisonment without parole shall be abolished or extended should be answered not only from the perspective of the system itself, but also from a macro perspective of death penalty reform and policies on serious crimes. Therefore, although its humanity, effectiveness and influence on the structure of punishment in criminal law have been questioned, life imprisonment without parole is undoubtedly playing a positive role in restricting the use of the death penalty, enhancing public trust in criminal justice, and responding to widespread doubts on justness and equality of judgements in notorious cases. This article suggests that Chinese legislature retain and extend the scope of life imprisonment without parole to all capital offences and lay down specific pardon proceedings to achieve legislative purposes.

Keywords: LWOP; Criminal Policy; Alternative Measure; the Death Penalty; Special Pardon

1. Introduction

The *Ninth Amendment to the Criminal Law of P.R.C* (hereinafter, the Ninth Amendment) that entered force as of 1 November 2015 created a Chinese version of life without parole (hereinafter, LWOP) by providing in article 44 that in the case where a convict is sentenced to death with a two-year suspension (suspended death sentence) according to item (3) of article 383,⁽¹⁾ the people's court may decide to commute the sentence to life imprisonment upon expiration of the two-year period, and sentence the convict to life imprisonment without any possibility of commutation or parole in light of the circumstances of the crime committed. According to authoritative interpretation of a Justice in the *Supreme People's Court of P.R.C* (hereinafter, the SPC), LWOP can only be applied to offenders convicted of graft or accepting bribes respectively provided in article 382 and article 385 of the *Criminal Law of P.R.C* (hereinafter, the Criminal Law) and eligible for death with immediate execution. Meanwhile, the LWOP decision should be made along with a suspended death sentence. Meanwhile, LWOP must be used resolutely if legal requirements are satis-

ficed to maximize its special function of filling in the blank between death with immediate execution and life imprisonment with parole and commutation and strictly punishing corruption and bribery, and be used cautiously (Pei, Miao, Liu & Wang, 2016).

Since the adoption of the Ninth Amendment, many nationally notorious corrupt high-level officials such as Bai Enpei, former secretary of Communist Party of China (CPC) Yunnan Province Committee, Wu Changshun, former head of police department of Tianjin Municipal Government and Wei Pengyuan, former vice director-general of National Administration of Energy and Resources have been sentenced to LWOP. Meanwhile, academic debates on LWOP seem as heated as when it was proposed. For example, it is still ferociously criticized as an inhumane and ineffective system and therefore suggested be abolished immediately (e.g. Wu, 2017; Hu, 2016). On the contrary, more than one expert insists that the system should not only be retained, but also be extended to cases other than corruption and bribery (e.g. Zhou, 2019; Shang and Zhao, 2017). There are also researchers holding that the system shall not be used in cases of corruption and bribery but in those of terrorist

offences (e.g. Shu, 2018). This article is intended to answer questions whether LWOP should be abolished or retained and its application scope maintained or extended and bring forward specific suggestions to better realize the purpose of Chinese legislature.

2. Should LWOP be Abolished or Retained?

The space for arguing at a normative level such as application and enforcement conditions of LWOP is so limited that both researchers against (abolitionists) and for (supporters) LWOP, although they draw completely different conclusions, base their arguments on the justness of the system. Specifically, their conclusions are based on their contradictory answers to following questions: (1) Is LWOP humane? (2) Is LWOP necessary? (3) Is LWOP effective?

2.1 Arguments for Abolition: Partial Understandings?

As for the first question, abolitionists insist that, while ensuring criminals' right to live, LWOP completely deprives them of the hope to return to society. To live in helplessness and despair waiting for the ultimate end of death is more painful than immediate execution and extremely destructive to humanity (Han, 2016). Therefore, LWOP is inhumane, unusual and cruel and should be abolished as soon as possible.

Meanwhile, abolitionists deem LWOP completely unnecessary as an alternative to the death penalty or a punishment for corruption and bribery. In the first place, the fact that LWOP and the death penalty are of the same nature makes it illogical to replace the latter with the former. Meanwhile, LWOP breaks legislative principles and is useless to abolition of the death penalty because existing system of criminal punishment has offered more than one temporary measure to realize the ultimate goal of abolishing the death penalty (Li, 2017). Secondly, LWOP can result in nothing but vast waste of judicial resources and heavy financial burden on prison administration because governments must invest much more than before (Han, 2016; Yao and Li, 2016). Thirdly, existing punishment structure leaves no place for LWOP (e.g. Han, 2016), because the *Eight Amendment to the Criminal Law of P.R.C* (hereinafter, the Eighth Amendment) and the Ninth Amendment have further reasonably narrowed the gap between the death penalty and other penalties that do

not deprive offenders of their right to life, and thereby created a basic structure where the two categories of punishment are able to interconnect with each other very well and solved the problem of the death penalty being too heavy while other penalties being too light that Chinese scholars criticized (e.g. Chen, 2006). Finally, abolitionists argue from a comparative perspective that, for example, Japanese researchers once explored the possibility of legalizing LWOP as an alternative to the death penalty too, but Japan has not accepted the system into its criminal law (Wu, 2017) so far. Then, why should China adopt such a system? As far as corruption and bribery are concerned, many researchers supporting LWOP express strong opposition too as they are not considered most serious and dangerous (Shu, 2018).

In addition, abolitionists deem LWOP ineffective as it cannot realize the function of retribution or deterrence at all. For example, it was held from a comparative perspective as early as ten years ago that LWOP not only went against the principle of justness but also was meaningless to realizing retribution, because sentencing a criminal who committed a serious crime to ten-year imprisonment would be considered just too according to the principle of retribution (Zhang, 2008). More specifically, LWOP is a kind of sanction more severe than death with immediate execution, while the latter is commonly recognized as the upper limit of criminal responsibility. Therefore, imposition of LWOP in corruption and bribery cases exceeds the upper limit of defendants' liability and breaks the principle of severity of punishment being proportionate to seriousness of crime (He, 2018). As for the deterrence of LWOP, it has been explicitly pointed out that LWOP has barely any special deterrence effect because it cannot help criminals in rehabilitating and reintegrating into society, and has limited general deterrence effect because punishments more severe than it such as the death penalty are there playing the role of the Sword of Damocles (Li, 2017). Some researchers, while recognizing that it does have deterrence effect, criticize that LWOP can only realize its deterrence through 'a way of destroying humanity' (Han, 2016:17).

Arguments against LWOP may seem reasonable and convincing. However, one of their most significant problems is that they focus mainly on the system itself and its abstract and logic relationship with seri-

ousness of crime, because LWOP, although a system in criminal law, has been adopted mainly for policy reasons, as the Commission on Legal Affairs of the Standing Committee of National People's Congress (hereinafter, NPC) explained in its *Report on Review Conclusions of Draft of Ninth Amendment to the Criminal Law of P.R.C* on 24th August 2015, 'it is according to the policies of using the death penalty cautiously and combining severity with leniency that the death sentence with immediate execution imposed on offenders convicted of corruption or bribery is reduced to LWOP.' Therefore, arguments against LWOP, although they are not incorrect, are at least partial understandings, and much more importance should be laid on policy analysis, and this is right what those for LWOP do.

Then, how do LWOP supporters answer the three questions mentioned above from a policy perspective?

2.2 Retention of LWOP: A Macro Analysis

2.2.1 Is LWOP Humane?

LWOP supporters hold that we should keep in mind following characters of humanity when answering the question whether LWOP is humane or not. In the beginning, the answer to this question varies with countries. For example, most European countries have ruled that life imprisonment without any possibility of release is inhumane according to article 3 of *European Convention on Human Rights*, which clearly prohibits states from subjecting anyone to torture or to inhuman or degrading treatment or punishment. The Supreme Court of Mexico and the Supreme Court of Namibia have also declared that LWOP is cruel, inhumane and degrading treatment gravely damaging humanity and therefore unconstitutional (Hood, 2015: 482). However, more than ten countries, including the US, the UK, South Korea and Russia, not only keep LWOP in law but also use it in practice (Shan, 2016). For example, the US Supreme Court clearly ruled that LWOP was not cruel and unusual treatment prohibited by the Eight Amendment to the US Constitution. What is more meaningful, the use of LWOP has been on continuous increase in recent 30 years in the US: from 10,000 in 1992 to 50,000 in 2012 (Wu, 2017). Attitudes toward LWOP vary among European countries too. While France, Italy and Germany have declared LWOP inhumane and unconstitutional, both the UK and the Netherlands still retain it and do not deem it

inhumane, and the Court of Appeal of the UK even ruled in 2014 that the Minister of Justice does not have to comply with the restriction of two special situations in prisoners' manual, namely, dying soon or being disabled, and should determine whether to grant a prisoner an early release taking into consideration all exceptional circumstances worth sympathy on a case-by-case basis. The European Court of Human Rights also ruled in *Hutchinson v. the United Kingdom* (Application no. 57592/08) in 2015 that the LWOP legislation in the UK was not inhumane (Shu, 2018).

Furthermore, the answer to the question changes as time goes, because our understandings and values are unavoidably affected by environments we are in. For example, most European countries, although they are now condemning LWOP as an inhumane and cruel treatment, did not doubt the justness and humanity of LWOP until 1970s, and it is not until in 2008 that the *European Court of Human Rights* threw doubts on LWOP and in 2012 ruled that LWOP is incompatible with article 3 of the *European Convention of Human Rights* (Wu, 2017). The change in attitudes toward the humanity of LWOP in European countries makes it clear that the answer to the question whether LWOP is humane to a degree reflects social, economic and political changes.

Finally, the humanity of LWOP should not be understood or interpreted from an absolute perspective but from a comparative one, because any punishment is punitive and of damage to human rights, just as Bentham once commented, 'all punishments are damages and therefore evil' (2000: 217). The humanity of LWOP may be doubtful when compared to short term imprisonment. However, what if compared to the death penalty, especially the death penalty with immediate execution in China? It should be recognized that LWOP is humane because it only deprives offenders of their liberty while the death penalty the right to life, and this is right the reason that the latter is considered a fundamental infringement on the right to life and breaks article 3 of the *Universal Declaration of Human Rights* proclaiming all people shall have the right to life (Hood 2015:8). Meanwhile, LWOP leaves offenders with a door, although very narrow, to be released sometime in the future. For example, a LWOP convict can walk out of prison when granted a special pardon because he or she is still alive. What is more meaningful, the humanity of LWOP is recognized by

majority of the public in many countries. For example, a global poll conducted by an American public poll company showed that more than half of interviewees in all European countries other than the UK chose LWOP as the appropriate punishment for murder, just as Canadian interviewees did (Hood, 2015:449).

Briefly, judged from a comparative perspective, LWOP, as an alternative to the death penalty, is a humane system, not only because it spares offenders' life and may give them a possibility of release, although very narrow, but also because public perception on it varies with political and cultural environments.

2.2.2 Is LWOP necessary?

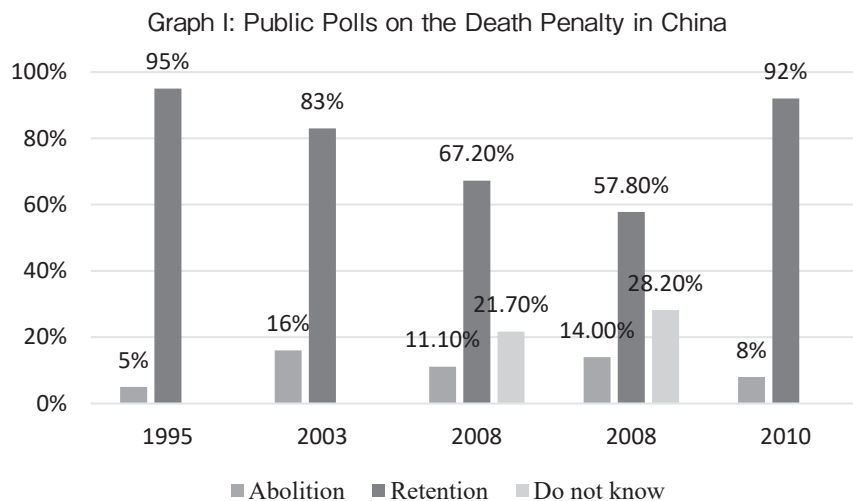
Considering abolitionists questioned not only the necessity of LWOP to death penalty reform but also that to prevention of corruption and bribery, LWOP supporters answer this question at two levels.

(1) Is LWOP necessary to death penalty reform?

Supporters firmly believe that LWOP is necessary to death penalty reform in China. In the first place, LWOP offers a legislative approach to further restricting and reducing the use of the death penalty in practice. Guided by death penalty policies of strictly controlling and cautiously using and gradually reducing the use of the death penalty, Chinese death penalty reform has made meaningful breakthroughs at both legislative and judicial levels in recent years. On one hand, the Eighth Amendment in 2011 and the Ninth Amendment in 2015 respectively abolished 13 and nine capital offences, reducing the number of capital

offence from 68 to 46. On the other hand, withdrawal of the final power to review death sentences from certain provincial high people's courts to the SPC in January 2007 has substantially decreased the number of death sentence with immediate execution. The SPC declared as early as in March 2008 that suspended death sentence had outnumbered death sentence with immediate execution (Yin, 2008). However, when it comes to violent crimes such as murder and intentional assault resulting in death, death penalty reform will surely be confronted with strong opposition. Therefore, future death penalty reform must lay more importance on practice than before, just as a well-known Chinese expert once stated, 'it is the most important approach to achieving the purpose of death penalty reform to gradually control, reduce and eventually stop using the punishment in practice' (Liang, 2010:20), and LWOP undoubtedly lays down legal foundation for this approach.

Secondly, LWOP can function as a systemic tool to change public opinion on the death penalty in China. Public opinion is an obstacle that cannot be circumvented to the end of complete abolition. Its influence in Chinese political context is so tremendous that it is believed that 'abolition of the death penalty would be an impossible task before public opinion changes' (Mo, 2011:71). As can be easily seen from Graph I, all five national public polls respectively conducted by Chinese Academy of Social Sciences and National Statistics Agency of P.R.C in 1995, a civil organization in 2003, an internet company and Center for Chinese Death Penalty Reform in 2008 and Tencent Corporation in 2010 show that most interviewees strongly support retention of the ultimate punish-



ment.⁽²⁾ Although it might be argued that questions in questionnaires are too general or more information should have been given, how could we go further to abolish the death penalty for murder and other crimes leading to death if we could not decrease general support for the death penalty? One of the reasons for high public support is the fear for the absence of an appropriate punishment for the most serious crimes when the death penalty is abolished. Therefore, the state must clearly show its resolution and toughness on crime problem and make all possible efforts to eliminate such fear. LWOP undoubtedly can be of assistance because it, although exempting offenders from execution, will keep offenders in custody till the end of natural life.

Thirdly, LWOP is an experimental field and a touchstone for further death penalty reform. As mentioned above, LWOP was accepted into the Criminal Law as a policy choice to cope with problems and chaos in fighting corruption and bribery. Although it has been criticized, supporters hold that ‘LWOP should be extended when necessary conditions are mature if seen from the perspective of overall death penalty reform,’ (Zhao and Shang, 2017: 178). Whether the system can be extended is up to its practical effect to a considerably high degree. Therefore, it can be fairly said that LWOP in corruption and bribery cases is an experimental field not only for testing whether it can be used as a special policy tool against other serious crimes, but also for pushing forward death penalty reform.

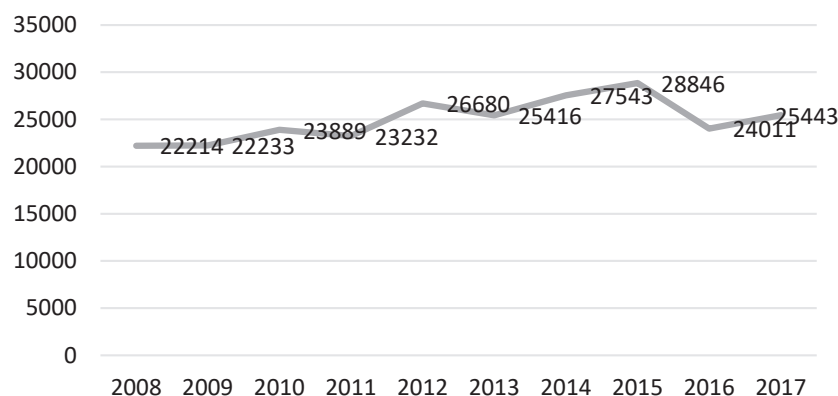
Finally, will LWOP impose excessively heavy financial burden on prison administration? It should be admitted that LWOP costs. However, strict conditions must be satisfied, for example, eligibility for

death sentence with immediate execution to apply LWOP in practice. This means that only a few offenders will be sentenced to LWOP and will not lead to extra financial cost as much as abolitionists expected. What is more important, we cannot abolish LWOP even if it substantially increased financial burden, because money cannot never be considered more important than life. Meanwhile, it should be noted that although improvements in punishment structure have been made in recent years, they do not exist in practice but only in law to a high degree, and as explored below, it is to solve the problem of a death sentence being too heavy while other sentences being too light in practice that LWOP was legalized.

(2) Is LWOP necessary in corruption and bribery cases?

Argument against the use of LWOP in corruption and bribery cases is considerably strong even among those for the system because these crimes generally are not considered most serious and dangerous. However, it is right because corruption and bribery are not the most serious and dangerous crimes that LWOP should be used in these cases. On one hand, offenders in these cases are legally punishable by death,⁽³⁾ and it seems that there is a long and hard way to go before abolition of the death penalty in existing political context. Therefore, to replace some death sentences with immediate execution with LWOP not only helps to restrict the use of the death penalty but also shows respect to article 6 (2) of the *International Covenant on Civil and Political Rights* requiring countries still retaining the death penalty to restrict its application to the most serious crimes. On the other hand, foreign jurisdictions have proven that LWOP is not necessar-

Graph II: Corruption and Bribery Cases Received by the People's Court [2008-2015]



ily limited to the most serious crimes. For example, more than 30 percent offenders sentenced to LWOP in eight states in the US were not convicted of murders or other offences resulting in death, and 3287 offenders were imposed LWOP because of drug-related offences, property offences and other non-violent offences (Hood, 2015:481).

It should be noted that whether corruption and bribery are not as serious as crimes leading to death has been argued too (e.g. Zhou, 2019). Corruption and bribery are unanimously considered cancer eroding the foundation of society and the state in China. As can be easily seen from Graph II, corruption and bribery cases that the people's court received in the past decade have been on increase since 2008,⁽⁴⁾ despite China has been implementing a 'zero tolerance' policy and sentenced more than 20 officials at ministerial and even higher level to death with immediate execution or suspended death. This problem is considered so politically crucial that the highest decision makers have recognized that corruption problem is dooming on the existence of the state and the future of the Chinese nation (Guan, 2014). Meanwhile, China has seen a big number of major industrial incidents in recent ten years, resulting in thousands of deaths and injuries. A news released by a governmental organization on 9 April 2012 showed that corruption and bribery crimes were direct cause of more than 1/3 major incidents investigated in past five years (Zhou, 2012). Therefore, it might be said that corruption and bribery crimes are even more serious and dangerous than lethal crimes from the perspective of collective human rights (Zhou, 2019).

What is more important, to use LWOP in corruption and bribery cases is potential to change public opinion on the death penalty in China. Chinese highest decision makers, deeply feeling that corruption erodes the foundation of the state, just as President Xi once pointed out, 'corruption will finally lead to complete destruction of the party and the country if it continues to go from bad to worse' (Xi, 2014), have been taking tough measures to prevent and sanction corruption ever since the foundation of P.R.C, and China has seen a rapid increase in the number of high-level officials sentenced to death with a reprieve due to corruption and bribery in recent ten years. Unfortunately, practice has proven that 'these offenders usually stay in prison only for a short time. They took full advantage of their

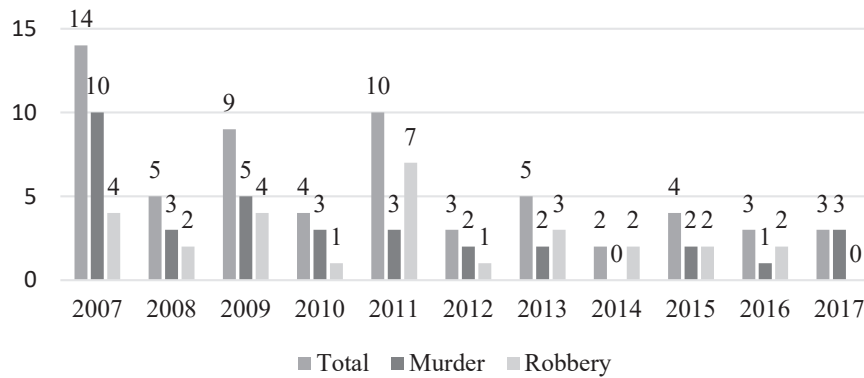
influence and relationship network they created using powers they once had to leave prison through commutation, parole and temporary release for medical service' (Shan, 2016). For example, Ma De, former Secretary of CPC Suihua Committee of Heilongjiang Province, was sentenced to death with reprieve in 2005 and served 12 years in prison after his sentence was commuted three times. Hu Jianxue, former Secretary of CPC Tai'an Committee of Shandong Province, was sentenced to death with immediate execution at first instance in 1996, then was quickly reduced to death with a reprieve at second instance and granted temporary release for medical service in consecutive seven years since 2006. Jiang Yanping, called the most notorious corrupt female official by media, was sentenced to death with immediate execution in 2001 and granted a reprieve two years later in 2003. What is more, she was released on parole for medical service after serving only nine years in prison (Xu, 2017). Various problems in enforcement of suspended death sentence and use of parole and commutation not only decreased the deterrence of suspended death sentence and the effect of zero-tolerance anti-corruption policy, but also led to widespread distrust in government and justice. Therefore, LWOP was also adopted as a countermeasure to problems in executing sentences in corruption and bribery cases (Wang, 2015), and legislature's primary purpose is to strengthen the connection between the death penalty and liberty penalties and ensure the deterrence of life imprisonment by eliminating chaos in execution of criminal judgments (Guo, 2016). It is expected that realization of the legislative purpose may change the public opinion on the death penalty, at least in corruption and bribery cases.

2.2.3 Is LWOP effective?

As for the last question, in the first place, the seriousness of LWOP has made it clear that it is not the case that LWOP does not have the value of retribution and cannot help offenders in rehabilitating. On the contrary, the retribution weight it imposes on corrupt offenders is too much compared to evils they did, and it gives offenders a precious opportunity and maybe too much time to rehabilitate.

Secondly, as far as prevention value of punishment is concerned, LWOP undoubtedly has the biggest special prevention effect if the death penalty is

Graph III: Death Sentences at First Instance in Japan (2007-2017)



excluded, because special prevention refers to ‘preventing offenders from commit a crime again by sentencing and punishing’ (Gao and Ma, 2011:223) and LWOP directly makes it completely impossible for offenders to commit any crime again by keeping them in custody for a lifetime, whether rehabilitated or not. Just like the death penalty that leaves no opportunity for offenders to reintegrate into society, can we say it has no special prevention? The answer is definitely no. Whether a punishment can generate general prevention effect or not is not only up to its severity, but also its certainty and timeliness. In the context of restricting the use of the death penalty, the severity of LWOP is undoubtable. However, its certainty and timeliness are totally decided by justice system, especially investigation authorities. Therefore, the conclusion that LWOP has no general prevention effect cannot be drawn from itself, its cost or systemic cause of corruption.

Finally, as abolitionists correctly pointed out, Japan has not legalized LWOP so far. However, the reason may be not that it is ineffective, but it is unnecessary. As Graph III shows,⁽⁵⁾ the death penalty is only used in cases of murder and robbery resulting in death at first instance trial, and death sentences have been decreasing, from 14 in 2007 to three in 2017. Meanwhile, many death sentences are highly possible to be reduced at appeal trials. On one hand, death sentence is very rare and can only be found in lethal cases. On the other hand, offenders may have to wait for years before execution. For example, average time in death row of 15 offenders executed in 2008 is four years, and some had been waiting for death for more than 20, 30 even 40 years (Hood, 2015: 203). Waiting for a long time in death row while being tortured by uncertainty of death or life itself is a kind of painful

punishment. Therefore, it might be unnecessary for Japan to adopt LWOP as an alternative to the death penalty.

To draw a conclusion, LWOP, as an alternative to the death penalty, can further implementation of the policy of restricting the use of and eventually abolishing the death penalty not only by decreasing death sentence with immediate execution but also by changing public opinion. Therefore, it is not inhumane, unnecessary or ineffective when seen from a policy perspective.

3. Should application scope of LWOP be Maintained or Extended?

As to the application scope of LWOP in the future, different and even contradictory opinions can be seen among its supporters, and this question should also be answered from a policy perspective.

3.1 Reasons for Extension

Opinions regarding the application scope of LWOP can generally be divided into three categories. First category of opinion suggests that LWOP be applied to other crimes instead of corruption and bribery. For example, while recognizing it as a practical policy choice, Shu (2018:155) holds that LWOP should not be applied to corruption or bribery crimes but in terrorist crimes according to the principle of proportionality. Second category of opinion takes a relatively conservative stance, suggesting the legislature maintain extant application scope and adjust it according to its practical effect. For example, Huang (2016: 260) proclaims that LWOP may be extended to other crimes if the purpose of abolishing the death penalty for corruption and bribery were realized. Otherwise, it must be stopped as soon as possible. Last category of opinion insists that the application scope

of LWOP should be further extended. For example, Liu (2017:35) argues that LWOP should be extended to economic and non-violent crimes as an alternative to the death penalty judged from the principle of crime, liability and punishment being compatible. Zhao and Shang (2017:129) further argues that LWOP may be extended to all capital crimes that cannot be expected to be abolished in short time because it is a meaningful test of combining legislative and judicial efforts to restrict the death penalty.

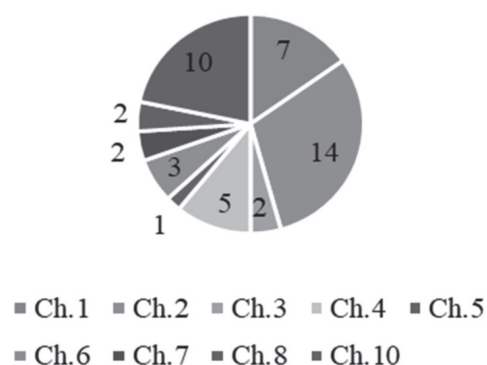
The first category of opinion is partial for three reasons. In the first place, it is on the basis of seriousness of corruption and bribery in reality, instead of that in law, that Chinese legislature adopted LWOP into the Criminal Law as a special countermeasure. Therefore, to criticize the application of LWOP to corruption and bribery is unreasonable. Secondly, beside crimes seriously violating rights of the person and public security such as murder, arson and explosion committed with a terrorist purpose, most terrorist crimes, especially those provided in article 120 to article 120.7 are only punishable by fixed-term imprisonment. Therefore, LWOP is inapplicable because it can only be imposed on those eligible for death with immediate execution. In other words, maxim penalty for most terrorist crimes makes it impossible to apply LWOP. Thirdly, as noted above, LWOP is applicable not only to murder but also to nonviolent crimes such as property ones in some foreign countries. Therefore, it is unconvincing to oppose LWOP relying on the principle of compatibility of severity of punishment and seriousness of crime.

Meanwhile, it is inappropriate to consider the abolition of the death penalty for corruption and bribery as the symbol of success of LWOP and thereby decide its fate. On one hand, LWOP is not only an alternative to the death penalty but also a special policy choice to cope with corruption problem. Therefore, even if it could not realize the purpose of abolishing the death penalty for corruption and bribery, it would still be a great success if it could, while effectively restricting the use of the death penalty, further implementation of anti-corruption policy, enhance anti-corruption culture and create an atmosphere favorable for building a clean and integral government. On the other hand, as mentioned above, LWOP is expected to increase public support for abolition of the death penalty. Therefore, it can be said to be successful if it

could help to implement the policy of strictly controlling and cautiously using the death penalty and create conditions for gradually abolishing capital crimes. That is, if LWOP could realize any of the purposes mentioned above, we may consider extending its application scope, whether the death penalty for corruption and bribery is abolished or not.

Finally, it is necessary to extend the application scope of LWOP to especially violent crimes to make the best use of this alternative to the death penalty. On one hand, it is meaningless to limit LWOP to economic and non-violent crimes. As Graph IV shows, nine chapters of Special Part of the Criminal Law⁽⁶⁾ provide 46 capital offences. However, only five are economic and non-violent crimes in strict sense, accounting for 1.1 percent: two in chapter three (Manufacturing or Selling Fake Medicine; Manufacturing or Selling Poisonous or Harmful Food), one in chapter five (Robbery) and two in chapter eight (Corruption and Accepting Bribe). Meanwhile, robbery is widely thought of as a violent crime too and corruption and bribery are now punishable by LWOP among these five crimes. What is more, although there are 46 capital offences in the law, more than 90 percent death sentences are given in five categories of key cases, including murder, intentional assault resulting in death, robbery, crimes endangering public security and drug crimes (Xue, 2018), among which only drug crimes may be considered economic and non-violent. On the other hand, it helps to set up subtle standards of distinguishing those who deserve immediate execution and those whose sentence could be reduced to LWOP to extend it to violent crimes, because, just as a judge once said, ‘judicial authorities have accumulated rich sentencing experiences’ in the five categories of key cases mentioned above (Xue, 2018). On the con-

Graph IV: Capital Crimes in the Criminal Law



trary, few death sentences in cases of other crimes make it relatively hard for judges to apply LWOP properly.

Briefly, LWOP should be gradually extended not only to economic and non-violent crimes similar to corruption and bribery, but also to all crimes punishable by death, especially those frequently seen in practice in the context of death penalty reform. Only by this way can LWOP efficiently function as an alternative to the death penalty and a policy tool to enhance public trust in justice system and create favorable atmosphere for gradually reducing and finally abolishing the death penalty.

3.2 Legislative Proposals

3.2.1 Proposals for Substantial Criminal Law

Then, how to extend the application scope of LWOP in substantial criminal law? Different proposals brought forward so far can roughly be divided into two categories. One suggests legislature provide LWOP in chosen articles in the Special Part of the Criminal Law and the other in article 50 of the General Part of the Criminal Law⁽⁷⁾ (e.g. Han & Zhang, 2016). Seen from the perspective of gradual extension, the former is of course proper. However, as mentioned above, this article suggests LWOP be extended to all crimes punishable by death. Therefore, the latter should be chosen over the former. In the first place, there are still 46 capital crimes, and it would be a shameful waste of resources and redundant to insert an item providing LWOP in each article. Secondly, LWOP as a legal system is a means of enforcing suspended death sentence. Therefore, the article 50 is the right place it belongs to. Finally, first item of the article 50 provides normal conditions to commute a suspended death sentence, and second one provides when and how to put restrictions on commutation of given offenders' suspended sentence. Therefore, it is logical to add a paragraph as third item into the article providing conditions under which no commutation and parole can be granted.

3.2.2 Proposal for Procedural Criminal Law

Considering 'offenders shall not be granted any mercy during serving their sentence even if they made major meritorious contribution under existing law' (Pei, Miao, Liu & Wang, 2016), LWOP means life for life. Therefore, it would wise to create a controllable way

out of prison while maintain the deterrence of LWOP if it is extended to all capital crimes. It must be noted first that this way should not be commutation, parole or temporary release for medical reason because as mentioned above, it is to prevent and eliminate chaos and problems in implementation of these systems that LWOP was adopted. Appealing to them will open a door for all the chaos and problems to return and put everything in the old track.

From perspectives of practical considerations and rule of law, special pardon system in article 67 of the *Constitution of the P.R.C* (the Constitution) may be the best choice.⁽⁸⁾ On one hand, both the Criminal Law and the *Criminal Procedural Law of P.R.C* (the Criminal Procedure Law) provide special pardon as a special circumstance. For example, article 65⁽⁹⁾ and article 66⁽¹⁰⁾ of the Criminal Law list 'being pardoned' as one of constituent elements of recidivist, and article 16 of the Criminal Procedural Law provides that a person who has been granted exemption of criminal punishment in a special pardon decree shall not be subject to criminal liability, and if any criminal procedure has been initiated against such a person, the case shall be dismissed, a non-prosecution decision shall be made, the trial shall be terminated, or the person shall be acquitted. On the other hand, justice authorities have accumulated experiences in carrying out special pardon orders. China issued seven special pardon orders before 1980s, granting more than 12000 offenders an early release, including anti-revolutionists and war criminals who had truly turned over a new leaf.⁽¹¹⁾ On 29 August 2015, the NPC Standing Committee issued 8th special pardon decision granting special pardon to four categories of prisoners who are serving sentences under effective judgments made by the people's court before 1 January 2015, and will not pose a real threat to the society after their release to 'mark the 70th anniversary of the victory of the Chinese People's War of Resistance against Japanese Aggression as well as the World Anti-Fascist War and reflect the concept of the rule of law and the humanitarian spirit', and 31,527 criminals benefited from the decision (Fu, 2019). On 29 June 2019, the NPC Standing Committee adopted the *Decision of the Standing Committee of the National People's Congress on Granting Special Pardons to Some Prisoners on the Occasion of the 70th Anniversary of the Founding of the People's Republic of China*,⁽¹²⁾ deciding to grant nine categories

of prisoners a special pardon to celebrate the 70th anniversary of the founding of the New China as ‘a step to uphold governance by the rule of law and to improve the protection of human rights’ (Cao, 2019). Although in keeping with China's determination to fight corruption and uphold social stability, both the decision in 2015 and 2019 declared prisoners convicted of graft-related or violent crimes are ineligible for the special pardons, if the determination could be properly shown through just and strict use of LWOP in all death-eligible cases, it would not be impossible to grant special pardons in a few cases where offenders made particular contribution to the state or the society recognized by the NPC Standing Committee.

Meanwhile, it should be noted that two deficiencies in current special pardon system make it infeasible to open a door for LWOP offenders. One is that the Constitution provides the NPC Standing Committee has the right to grant special pardon. That is, special pardon is not a legal right but a privilege and offenders cannot apply for it. The other is that neither the Constitution, the Criminal Law nor the Criminal Procedure Law provides specific proceedings for special pardon. Therefore, it is suggested that legislature take steps to perfect extant special pardon system to further extension of LWOP and thereby create favorable environment for death penalty reform. Specifically, the Constitution grants LWOP offenders the right to apply for a special pardon, and prohibits any authority including the people's court from depriving them of the right. Meanwhile, an organization is established or authorized to handle special pardon applications. For example, the NPC Standing Committee may establish a special commission or authorize its Commission on Legal Affairs or the SPC to handle the applications, and then decides on its report. Moreover, detailed conditions and proceedings must be laid down. For example, a LWOP offender may apply for a pardon to the authority in charge after serving 25 years in prison based on crucial contributions he or she made to the state or society, etc. The legislature may provide a special pardon procedure as Chapter V of Part 5 (Special Procedures) of the Criminal Procedure Law. Finally, it would be helpful for the authority in charge to issue guidelines on specific issues regarding the special pardon procedure.

4. Conclusions

LWOP as a legal system is of a part of the superstructure, and the answer to the question whether it is humane, rational and effective is unavoidably influenced by plural factors such as economic basis, environment of rule of law and legal tradition. Therefore, debates on LWOP should be analyzed from a comparative perspective taking into consideration all related conditions. If seen from its policy nature of being an alternative to the death penalty, a special countermeasure to corruption and bribery and a window to enhance public trust in justice system, LWOP is not only humane but also necessary and effective, just as in the US, where those supporting abolition of the death penalty not only believes that LWOP is definitely necessary to further death penalty reform, but also deems it more effective, fair and reliable than the death penalty (Hood, 2015:482).

Therefore, LWOP should be extended to all capital crimes, especially the five key categories of crimes attracting the absolute majority of death sentences in practice, to effectively carry out death penalty reforms and substantially implement death penalty policies. Meanwhile, sentencing experiences already accumulated in these cases can make application of LWOP more accurate and rational. Moreover, the special pardon system in the Constitution should be used more positively than before, granting those put on LWOP a controllable way out in special situations.

In conclusion, LWOP is meaningful to the implementation of the national policy of gradually reducing the use of and eventually abolishing the death penalty through strict restriction and cautious use. Therefore, instead of restricting its use, we should positively create conditions to extend its application scope and use it accurately and rationally.

Notes

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- (1) The item provides that, whoever commits the crime of corruption, if the amount involved in the corruption is especially huge or there is any other especially serious circumstance, the convict shall be sentenced to imprisonment of not less than ten years or life imprisonment in addition to a fine or forfeiture of property; or if the amount involved is especially huge and especially material losses have been caused to the interests of the state or the public, the convict shall be sen-

tenced to life imprisonment or death penalty and a forfeiture of property.

- (2) See Tencent New, Statistics that You Should Know about the Death Penalty, available at <https://news.qq.com/newspe-dia/death.htm> (accessed 18 August 2019).
- (3) When the Ninth Amendment to the Criminal Law abolished 13 capital offences in 2015, many scholars expected that the people's court may stop using the ultimate punishment in non-violent and economic cases. But they have been proven too optimistic because Zhang Zhongsheng, a former deputy major of Lv Liang City, Shanxi Province convicted of corruption, was sentenced to death in March 2018 and soon executed.
- (4) All the statistics can be accessed on the website of National Administration of Statistics (<http://data.stats.gov.cn/easyquery.htm?cn=C01>).
- (5) The statistics are extracted from *the White Crime Report 2018* released by the Ministry of Justice of Japan.
- (6) The 9 chapters include Chapter 1: Crimes of Endangering National Security, Chapter 2: Crimes of Endangering Public Security, Chapter 3: Crimes of Undermining the Order of Socialist Market Economy, Chapter 4: Crimes of Infringing Upon the Rights of the Person and the Democratic Rights of Citizens, Chapter 5: The Crime of Encroaching on Property, Chapter 6: Crimes of Disrupting the Order of Social Administration, Chapter 7: Crimes of Endangering the Interests of National Defense, Chapter 8: Corruption and Bribery and Chapter 10: Crimes of Violation of Duty by Military Personnel.
- (7) The article provides procedures and conditions to commute a suspended death sentence to life imprisonment or a fixed term imprisonment and put restrictions on commutation.
- (8) Article 67 of the Constitution authorizes the standing Committee of the National People's Congress to decide on the granting of special pardons, and article 80 of the Constitution continues to provide that the President of the P.R. C issues orders of special pardons in pursuance of the decisions of the Standing Committee.
- (9) The article provides that Where a convict sentenced to fixed-term imprisonment or a heavier penalty commits again a crime for which a fixed-term imprisonment or a heavier penalty shall be given within five years after finishing serving his sentence or being pardoned, he shall be a recidivist and be given a heavier penalty, unless it is a negligent crime or he commits the crime under the age of 18.
- (10) The article provides that a convict of jeopardizing the national security, terrorist activities or organized crime of a gangland nature shall be punished as a recidivist for any of such crimes committed again by him at any time after he finishes serving his sentence or is pardoned.
- (11) For more information regarding these 7 special pardon orders, see 9 Special Pardons after the Foundation of New China. Online, available at <http://news.ifeng.com/c/7nvCrEegEwC>.
- (12) For more information, see Cao Yin, Special pardons issued for PRC's 70th anniversary, available at <http://www.chinadaily.com.cn/a/201907/01/WS5d194852a3103dbf1432b159.html> (accessed 18 August 2019).

html (accessed 18 August 2019).

List of Abbreviations

CPC	Communist Party of China
NPC	National People's Congress of People's Republic of China
LWOP	Life Without Parole
P.R.C	People's Republic of China
SPC	Supreme People's Court People's Republic of China

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